

## **B. Proposed Amendment to Business and Professions Code Section 6007(b)**

Among the most frequent criticisms or perceived shortcomings of the Pilot Program has been the alleged inability of Pilot Program participants to serve any period of actual suspension recommended by the Pilot Program Judge's Decision at the commencement of their Pilot Program participation rather than upon their successful completion of or termination from the Pilot Program.

Additionally, while Business and Professions Code section 6233 and the State Bar Court's Program Outline for the Pilot Program recognize that a participant may receive credit for periods of his or her inactive enrollment towards any period of actual suspension, the only currently available vehicle for that inactive enrollment is Business and Professions Code section 6007, subdivision (b)(3), which requires a finding by the State Bar Court that, because of mental infirmity or illness or the habitual use of intoxicants or drugs, the attorney is (a) unable or habitually fails to perform his or her duties as an attorney; or (b) is unable to practice law without substantial threat of harm to the interests of his or her clients or the public. While Pilot Program participants have recognized that they have substance abuse or mental health issues, most of them dispute that their conduct falls within the requirements of section 6007, subdivision (b)(3).

As a result, the State Bar Court recommends an amendment to Business and Professions Code section 6007, to add a new subdivision (b)(4), in the form attached hereto as Appendix C, that would allow the parties to stipulate to or the Court to order the inactive enrollment of a member who is participating in the Pilot Program and for the attorney to receive credit for such period of inactive enrollment towards whatever period of actual suspension may be imposed at the conclusion of the proceeding.<sup>1</sup>

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<sup>1</sup> While respondent attorneys appear eager to serve any period of actual suspension at the commencement of their participation in the Pilot Program, there are a couple of dangers in doing so. The State Bar Court provides alternative discipline recommendations (i.e., one recommendation in the event the attorney successfully completes the Pilot Program and a second, more severe disciplinary recommendation in the event the attorney fails to complete the Program). It is conceivable, therefore, that the attorney may serve the shorter period of actual suspension on the assumption that he or she will successfully complete the Program and then be required to serve a second period of actual suspension if the attorney is subsequently terminated from the Program. Additionally, allowing the attorney to serve the actual suspension at the outset of the Pilot Program presumes that the Supreme Court, in acting upon the State Bar Court's disciplinary recommendations, agrees that the lower level of proposed discipline is appropriate. Since the Supreme Court has inherent power to impose greater discipline than that recommended by the State Bar Court, the Supreme Court may order a further period of actual suspension at the conclusion of the proceeding if it does not believe that the lower level of discipline recommended by the State Bar Court was adequate.